HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.26368 of 1997

29.8.2007

Between

Yembati Meeraiah ..Petitioner

AND

The District Collector, Nellore, Nellore District and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.26368 of 1997

There is no representation on behalf of the petitioner. This writ petition has been instituted seeking the following relief:

> "…. it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, preferably one in the nature of writ of mandamus, directing the respondents herein to issue assignment patta in respect of the land to an extent of Ac.1.15cents in S.No.20 of Koduru Kandriga Village, Thotapalli Gudu Mandal, Nellore District, which is in occupation of the petitioner since long time, as per the order of this Hon'ble Court dated 4.9.1995 in W.P.No.19816/95 forthwith; .."

The writ petitioner asserts that he is in possession and enjoyment of the land of an extent of Ac.1.35 cents in Survey No.20 of Koduru Kandriga Village, Thotapalli Gudur Mandal, Nellore District for the past two decades. He also asserts that he has been cultivating the land and that instead of considering his request for assigning the land in his favour, the Mandal Revenue Officer had only granted him Ek Sal lease for the year 1405 Fasli and that the Mandal Revenue Officer has not finalized the issue of assigning the land. In these set of circumstances, questioning the action of the revenue administration of the State in granting him Ek Sal lease instead of regular assignment patta over the land in question, he filed W.P.No 19816 of 1995. This Court by its judgment and order dated 4.9.1995 disposed of the said writ petition in the following

manner:

> "Pursuant to the said direction of the second respondent, the 3rd respondent after conducting enquiry submitted a report to the District Collector, Nellore on 22.6.1995 recommending the land of an extent of Ac.1.15 cents in S.No.20 to the petitioner. In the said report, the Mandal Revenue Officer stated that out of the total extent of Ac.1.35 cents in the said survey number of a ryotwari patta for 20 cents was already granted to one Srinivasulu Reddy by the Inams Deputy Tahsildar and that the petitioner herein is in possession and enjoyment of the balance of Ac.1.15 cents only. The Mandal Revenue Officer further stated that the petitioner is eligible for assignment of the said extent and accordingly recommended his case to the District Collector. While the matter is still pending with the District Collector, the Mandal Revenue Officer issued the impugned proceedings dt.11.8.1995 granting temporary permission on 'Ek Sal' basis for fasli 1405 to the petitioner for cultivation of the said extent of Ac.1.15 cents. The grievance of the petitioner is that instead of granting permanent assignment patta to him, the Mandal Revenue Officer erred in granting temporary permission on 'Ek Sal' basis. I, however, see no error in this order since the matter relating to the assignment on permanent basis is pending with the District Collector, Nellore, I therefore, direct the District Collector, Nellore to pass final orders with regard to assignment of the said land to the petitioner in accordance with law within 3 months from the date of receipt of copy of this order. Meanwhile the petitioner shall not be evicted from the said land. The writ petition is disposed of accordingly."

In the counter affidavit filed in this writ petition by the Mandal Revenue Officer, it is pointed out that the land in question is classified as 'donka poramboke' and the consent of

the Gram Panchayat of the Village is required for reclassifying it as ‘assessed waste dry’, which alone will enable the land to be assigned in favour of the writ petitioner. Therefore, the Gram Panchayat had been addressed in this regard and that the Gram Panchayat had passed a resolution on 30.4.1996 disagreeing with the proposal for converting the ‘donka poramboke’ as ‘assessed waste dry’ land as in the opinion of the Gram Panchayat, the ‘donka poramboke’ land is intended for the utilization and benefit of the community at large. In these set of circumstances, the revenue administration of the State is unable to assign the land in question in favour of the writ petitioner. It is worthy to notice that over an extent of Ac.0.20 cents of land situate in the same survey number, the Inams Deputy Tahsildar has granted a ryotwari patta in favour of one Sri Sreenivasulu Reddy. Therefore, the writ petitioner could not have been in possession of the entire extent of Ac.1.35 cents of land, but at best, he could be in possession of land of an extent of Ac.1.15 cents. Inspite of the same, the writ petitioner asserts that he is in possession of Ac.1.35 cents of land. While granting the Ek Sal lease for the year 1405 Fasli, the Mandal Revenue Officer is conscious that the land in question can be put to effective utilization by way of cultivation.

The issue whether the land can be put to a better utilization instead of leaving it unattended to as a poramboke land, is the question which has got to be addressed and determined by the Collector. If the Gram Panchayat needs any land for the benefit of the community at large and if there is any other waste land available, it can be so utilized. Only in the event of non availability of such land for community purposes, perhaps, the objection of the Gram Panchayat for converting or reclassifying the land in question as ‘assessed waste dry’,

becomes tenable. It is therefore essentially a matter of fact as to whether the land in question is capable of being brought under cultivation and whether it is so cultivated by the writ petitioner. If in the opinion of the Collector, the land is capable of being put to effective utilization by subjecting it to cultivation and that it far outweighs the necessities and needs of the community of the Village, measures be taken to appropriately deal with the resolution of the Gram Panchayat dated 30.4.1996. The resolution of the Gram Panchayat will also be examined from the stand point of view of its genuineness and bonafides, in the sense that it was not propelled for private reasons to prevent the writ petitioner or for that matter any other person belonging to the weaker sections of the society from deriving any such benefit. If for any reason, the Collector comes to the conclusion that the land should not be converted as 'assessed waste dry' and consequently, be not assigned in favour of the writ petitioner, or, for that matter, in favour of any other better suited individual of the Village, the issue relating to grant of Ek Sal lease be examined on annual basis so that the interest of the community at large also can be appropriately balanced.

The exercise indicated above be completed within a period of six months from now and if the petitioner is continuing in possession of the land in question as of now, he may be allowed to continue to be in possession of the land.

With this, the writ petition stands disposed of.

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NOOTY RAMA MOHANA RAO.J.

29.8.2007
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